IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

JAGDISH SINGH @ PAPPU V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL APPEAL NO.1032/2002

Under Section 374 (2), Cr.P.C.,against the Judgment dated 27-11-2002, passed by Mr.Digpal Sharma, RHJS, the learned Additional Sessions Judge, (Fast Track), Sirohi camp at Abu Road in Sessions Case No.93/2002(67/2001)

DATE OF JUDGMENT :::: 10-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Pradeep Shah, for Appellants.
Mr. J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

This appeal is being preferred against the judgment of Additional Sessions Judge (Fast Track), Sirohi, Camp at Abu

Road, in Sessions Case No.93/2002 (67/2001).

Facts relevant to the case are that on 21.07.2001, at 4.15 p.m., Complainant – DaShrath Singh gave a written complaint (Ex.P-17) to the S.H.O., Police Station, Pindwara, on the scene of occurrence. It was stated that on 27.01.2001, at 4.00 p.m., he and his brother Dhana Ram were sitting in a hair dressing cabin of his brother at Bus Stand, Jhadoli. Jagdish Singh @ Pappu S/o. Jaisingh Chauhan came there and demanded money from his brother for liquor. His brother refused to give money, therefore, accused got annoyed and all of a sudden, taken out knife from his pocket and inflicted many blows to his brother. His brother sustained injuries on his hand, chest, as well as on his stomach. Jagdish ran away from the place of occurrence immediately, though his brother tried to stop by catching-hold of weapon, but sustained injuries on his hand. Lot of blood spread on the spot and while his brother ran after the accused, fell down on the road side and died. On the basis of report (Ex.P17), Constable Ganpat Singh, bearing No.235, was sent to Police Station, Pindwara, where F.I.R. Was registered as Ex.P-31.

After registration of FIR, Police conducted investigation and thereupon, filed challan against the accused Jagdish Singh under Section 302 of IPC before the Judicial Magistrate No.1, Pindwara, from where the case was committed to the Court of Additional

Sessions Judge, Abu Road. Vide order dated 21/23-10-2002, Additional Sessions Judge, Sirohi, transferred the case to the trial Court.

The accused was provided challan papers under Section 207 of Cr.P.C. and, thereafter, vide order dated 10.12.2001, charge was framed under Section 302 of IPC. Accused denied charges and claimed trial.

In the trial, 13 witnesses were produced by the prosecution and 31 documents were exhibited, whereas statement of accused was recorded under Section 313 of Cr.P.C. and, in defense, statement of Rama Ghanchi was recorded.

The trial Court, after recording its findings, convicted accused under Section 302 of IPC. The appellant was sentenced to the life imprisonment and penalty of Rs.2,000/-, in default to undergo one year's additional imprisonment.

Learned counsel appearing for the appellant submitted that accused was not involved in the incident. Thus, he was wrongly being convicted. It was further submitted that Dashrath Singh was not available at the scene of occurrence, hence his statement is doubtful, therefore, wrongly relied upon by the trial Court. It was lastly urged that even the recovery of weapon is doubtful, thus appellant has wrongly been connected with the crime.

Per contra, learned Public Prosecutor supported the

judgment of the trial Court and urged that Dashrath Singh – Complainant reported about the incident within a period of 15 minutes. Thus, there cannot be a false implication, in such a short period. It was further submitted that Dashrath's presence is well proved and weapon was also recovered in a short span of time. Thus, recovery cannot be doubted.

We have considered the rival submissions of the learned counsel for the parties and scanned the material available on record. PW 11 Dashrath stated that he was sitting at his brother's shop and at about 4.00 p.m., accused came and demanded money for liquor and when his demand was not satisfied, the accused lost his temper and took out knife from his pocket. Thereafter, accused gave many blows to the deceased and ran away in the street, leading to bank. The deceased tried to run behind the accused, but due to the injuries, he fell down on the road side and died. Within 15 minutes of occurrence, Police came on the spot and a written report of the incident was given under his signature. Police recovered blood from the shop as well as from the place where the dead body was lying. At that time, Narain Rao, Kanhaiya Lal, Shanti Lal and Prema Ram were present. In cross-examination, said witness stated that he is also having a Cabin and in between his cabin and cabin of deceased, there exists 4 - 5 cabins. It was further stated that Ex.P17 was not written by him, but was written on his

statement. At that time, Arjun Singh, C.I., was present. The complaint was written by Purohit. The said witness explained that he means to state that accused gave 5 – 6 blows but in the written report given to the Police, it was mentioned that accused caused many blows, but the substance of two things remains one. The said witness denied the suggestion that at the time of incident,he was sitting in his cabin and went to the spot only on the receipt of information. The witness, however, clarified that he being a disabled person, was not in a position to run after accused. Thus, there exists no deviation in the cross-examination of the said witness, who is otherwise an eye witness.

PW 10 Arjun Singh has stated that on 21.07.2001, an information was received about the incident on telephone and, accordingly, he went to place of occurrence, where, at about 4.15 p.m., complainant gave report and after calling for verification endorsed the report under his signatures. Ganpat Singh, Constable, was sent to the police station for registration of the report. The facts stated by said witness was corroborated by PW 12 Roop Singh, ASI of Police Station concerned. Said witness stated that at about 5.00 p.m., on 21.07.2001, they received a report through Constable,Ganpat Singh, and the FIR was registered immediately thereafter. In the cross-examination, PW 10 stated that information was received on

telephone. However, he has not enquired as to who has written Ex.P-17. Said witness further denied that at the time of preparation of map 'Panchnama' etc. independent persons were not available.

PW 1 Narain Lal stated that on 21.07.2001, police visited village Jhadoli, where the dead body of Thana Ram was lying. He further stated that close to the dead body, there exists hair dressure cabin, betel shop and hospital. Police recovered blood from the cabin, thereby PW 1 Narain Lal supported the case of prosecution. PW 9 Shantilal was declared hostile.

From defense side, DW 1 Rama stated that almost 13 months back, he had visited Dashrath's shop at about 4.00 p.m. And, at that time, Dashrath was in his shop, shaving one Vagtaji. At that time, 2 – 3 persons came from outside and informed Dashrath that his brother is lying on the road side. He and Dashrath thereafter went to the spot where Thana Ram was lying on the road side, but said witness has not seen any injury and had not even gone close to the dead body. The said witness further stated that he did not stay on the place.

PW 5 Dr. Rajendra Arora has stated that he conducted post mortem of deceased. It was found that deceased sustained five injuries which were caused by knife. Out of those injuries, one was caused on the head, close to right year, two on the chest, one on the upper side of stomach and one in the left hand

of the deceased. The said witness further stated that post mortem report contains even the opinion and cause of death seems to be due to injury at the upper side of stomach, damaging liver as well as injury on the chest causing damage to lungs. The weapon was also recovered having blood stain on it and the recovery of weapon was at the instance of accused and that too, within four hours of occurrence as occurrence took place at about 4.00 p.m. And the accused was arrested at 8.00 a.m. and, immediately thereafter, on his information, knife was recovered from the bank street. Thus, recovery of knife within short span of time cannot be doubted. In the FSL report (Ex.P-23), knife was found containing human blood and on examination, blood group existing on the shirt,pant and on the weapon, was found to be of 'O' Group. According to the learned trial Court, there was convincing evidence to prove the prosecution case.

The argument of the learned counsel for the appellant that accused was falsely implicated in the case cannot be accepted, in the light of evidence discussed above. It is a fact that incident took place at 4.00 p.m. and within a period of 15 mintues police came on the spot and the matter was reported, with a clear statement that accused inflicted many blows to the deceased. The accused was thereafter arrested at 8.00 p.m. and the weapon was recovered immediately thereafter. Clothes of

deceased containing blood were of the same group as was of the blood on the weapon. It is also a fact that blood was lying in the shop of the deceased, as well as at the place where the dead body was lying, therefore, occurrence took place in the cabin of the deceased and, at that time, when deceased tried to catch-hold of weapon, sustained injuries in his hands and on his efforts to run behind the deceased, he fell down on the road side, close to the cabin and died due to serious injuries caused. As per the opinion of Doctor, injuries caused to the deceased were sufficient to cause death. The statements of Dashrath Singh and his presence cannot be disbelieved as the occurrence has rightly been reported and that too, within a period of 15 minutes, where the possibility of giving wrong information is remote. In defense, DW 1 Rama was produced to create doubt about the presence of witness Dashrath Singh, but said witness cannot be given credit as his statements are quite unusual, thus doubtful. A person making a statement that when the body was seen on the road side, it was having no injuries and, above all, said witness immediately went away from the spot, where as it is known that if such incident is seen, no-body leaves spot immediately, especially when deceased was known. In view of facts, the argument of the learned counsel that even the recovery of weapon is doubtful cannot be accepted as knife was recovered on the information of accused on his arrest within a

period of four hours. In those circumstances, recovery of weapon cannot be doubted, more so, when one commits crime and tries to run away from the spot, then, either weapon is concealed at some secret place or is thrown immediately. In the present case, accused threw the weapon while running in a speed and, therefore, it was covered within few hours of occurrence. The weapon was containing human blood of 'O' Group which was otherwise existing on the cloth of the accused. Thus, in such circumstances, the contention of the learned counsel for the appellant doubting recovery of weapon, cannot be accepted.

The learned trial Court has discussed the statement of the accused accused and has taken note of the statements of those witnesses, who were declared hostile. The trial Court has gone through Exhibits available on record, more specifically recovery memos and FSL report. After discussing the material available on record, the trial Court felt satisfied with the prosecution case. In view of the discussions made above, we feel that the finding recorded by the learned trial Court calls for no interference and the arguments raised by the learned counsel for the appellant, are of no force. Thus, we are not inclined to interfere with the judgment of the trial Court.

In view of the discussions made above, we dismiss the

appeal filed by the accused appellant. The judgment of the trial Court is affirmed. The accused is to serve the sentence as imposed by the trial Court.

(MUNISHWARNATH BHANDARI),J. **(BHAGWATI PRASAD),J.**

Scd.